



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Board of Nursing Home Administrators/Department of Health Professions
VAC Chapter Number:	18 VAC 95-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Nursing Home Administrators
Action Title:	Regulatory review
Date:	

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The board has adopted amendments to its regulations for the licensure of nursing home administrators to allow additional hours of credit in an administrator in training program for persons with certain educational or professional credentials. Amendments will also clarify certain sections and will enable a trainee to work in a practicum or administrator-in-training program outside of Virginia in a licensed nursing care facility under the supervision of a nursing home administrator licensed in that jurisdiction.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
- 8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*

9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

The statutory authority for licensure and regulation of nursing home administrators is found in Chapter 31 of Title 54.1 of the Code of Virginia:

<http://leg1.state.va.us/000/1st/h3903040.HTM>

The Office of the Attorney General has certified by letter that the Board has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the amended regulation is to revise certain prerequisites for licensure that may be unnecessarily restrictive and adopt requirements that are reasonable and essential to protect the public health, safety and welfare. The intent of the changes is to eliminate barriers to licensure that may discourage a student or person working in another field from considering a career as a nursing home administrator. Therefore, amendments will allow an applicant to receive credit for certain educational or health care related credentials toward the requirements of an administrator-in-training program and will allow an applicant to receive credit for training in another jurisdiction under a preceptor registered by that state. At the same time, the Board has recognized its responsibility to license only those individuals that have sufficient knowledge and competency to safely and legally administer a long-term care facility with its population of extremely vulnerable and fragile persons.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

Substantive changes to the existing sections of the regulations include: recognition of training and preceptor in other states; a limitation on the number of continuing education hours required for reinstatement; a reduction in the internship for the degree program; additional hours of credit in an AIT for education or work as a supervising nurse in a nursing home; specification about the responsibilities of a preceptor while eliminating the requirement for direct supervision.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The primary advantage to the public of implementing the amended regulations is the elimination of barriers to licensure that might discourage some persons from seeking licensure as nursing home administrators. At a time when the number of persons in need of long-term care is increasing, the number of licensed nursing home administrators has decreased – from approximately 750 in 1998 to 708 in 2002. Amendments are intended to reduce the amount of time applicants, who may be changing careers or completing their education in another field, must spend receiving training prior to being licensed as a nursing home administrator. The Board will also be able to recognize preceptors licensed as administrators in other jurisdictions and to give credit for time spent in training in those facilities, which will encourage mobility from other states into Virginia. By making the training requirements less restrictive, the Board intends to make the profession more attractive to persons who have educational and experiential qualifications.

There are no disadvantages to the public as all amendments are intended to provide the training and education necessary to ensure that administrators are knowledgeable and experienced in the care and treatment of a frail and/or elderly population. Therefore, all training, whether in an internship as a part of a degree or certificate program or in an AIT program must take place in a licensed nursing home. Experience as a hospital administrator or director of nursing is valuable for basic knowledge of health care and administration but is lacking in the essential knowledge of laws and regulations governing the nursing home industry and the challenges of the nursing home population. Therefore, amendments specify experience in a nursing home prior to licensure.

There are no disadvantages to the agency; the amended regulation does not impose a new responsibility on the Board and does not involve additional cost or staff time. There may be an advantage to the Commonwealth if the amended regulations have the intended result of encouraging more persons to seek licensure. An increase in the number of licensees would help reduce the deficit in the Board's budget, but more importantly, would ensure that nursing homes have an available supply of administrators in the future.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Projected cost to the state to implement and enforce:

(i) Fund source: As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

(ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures: The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled.

Projected cost on localities:

There are no projected costs to localities.

Description of entities that are likely to be affected by regulation:

The entities that are likely to be affected by these regulations would be licensed nursing home administrators, preceptors and applicants for licensure.

Estimate of number of entities to be affected:

Currently, there are 708 licensed nursing home administrators and 188 administrators registered as preceptors. It is not known how many potential applicants for licensure might be affected by amendments to the rules for the administrator-in-training program.

Projected costs to the affected entities:

Depending on their educational and professional background, many persons seeking to become licensed as a nursing home administrator through the administrator-in-training program will have to obtain fewer hours, and those who are seeking licensure through a degree program will have fewer hours required in an internship. There is no cost to the administrator-in-training for training in a facility; they work as employees of the nursing home while learning the role of an administrator. Reducing the number of hours required for training will allow some applicants to be licensed sooner and assume a higher paid position as an administrator. Therefore, there are no costs for compliance for the affected entities.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

18 VAC 95-20-10. Definitions.

The Board recommends amendments to: 1) define an “internship” as the term more commonly used in the education and training of nursing home administrators and eliminate the use of the term “practicum”; 2) clarify that the national examination is the test offered by the National Association of Examiners for Long Term Care Administrators or any other test approved by the board to determine competency; 3) modify the definition of “preceptor” in order to allow the Board to recognize preceptors licensed in other states; and 4) amend the definition of state examination so it is clear that an applicant is to be tested only on the laws and regulations governing nursing home administration.

18 VAC 95-20-175. Continuing education requirements.

An amendment will specify a period of three years for maintenance of CE documentation; the current regulation implies that records must be kept indefinitely. There are also amendments to make the type of documentation required less burdensome and more consistent with what CE providers actually give to participants.

18VAC 95-20-200. Reinstatement for nursing home administrator license or preceptor registration.

An amendment is proposed to set a limit on the amount of continuing education a licensee would need to have to reinstate a license for a total of 20 hours per year for each year the license was lapsed or a total of 60 hours.

18 VAC 95-20-220. Qualifications for initial licensure.

Amendments are adopted to: 1) reduce the internship requirement for someone with a degree in health care or long term care administration from 400 hours to 320 hours; 2) allow credit for courses in health care administration for the certificate program; and 3) permit someone to use a preceptor in another state registered with the licensing board of that jurisdiction.

18 VAC 95-20-230. Application package. & 18 VAC 95-20-290. Examination requirements.

The Board recommends amendments for consistency with the current computerized administration of the exam. The requirements and deadlines in section 290 are no longer necessary, so it is being repealed. Subsection C of 290 is moved to section 230 to retain a rule stating the application for licensure shall be submitted after the applicant completes the qualifications for licensure.

18 VAC 95-20-300. Administrator-in-training qualifications.

Amendments that would permit someone to use a preceptor in another state registered with the licensing board of that jurisdiction and that would clarify the additional documentation that may be necessary to determine eligibility are proposed.

18 VAC 95-20-310. Required hours of training.

Amendments to the 2,000-hour administrator-in-training program (AIT) will: a) give 1,000 hours of credit in an AIT program to an applicant who is a registered nurse with supervisory experience in a training facility; b) allow a person with a degree in health care administration or comparable field to be licensed after completion of a 320-hour internship; c) give 1,000 hours of credit to an applicant with a master's degree in an unrelated field; d) give 500 hours of credit to an applicant with a bachelor's degree in an unrelated field; and e) require training in the night shift in addition to other times of the day.

18 VAC 95-20-330. Training facilities.

Amendments are adopted to: 1) permit training in a licensed nursing facility in another state, provided the requirements for licensure and the AIT program are comparable to those in Virginia; 2) clarify that institutions are "operated by" rather than licensed by MHMRSAS; and 3) clarify the definition of a licensed hospital operating a certified nursing home unit.

18 VAC 95-20-340. Supervision of trainees.

The Board is eliminating the requirement for “direct supervision” as that implies that the preceptor is physically present in the facility at all times and that is not practical or necessary for an administrator-in-training to be properly trained and supervised. To ensure that preceptors and trainees understand the responsibilities of the preceptor during training in a licensed facility, the Board proposes to add subsection C specifies the duties and responsibilities of the preceptor. In addition, an amendment will permit the acceptance of hours in an AIT obtained in another jurisdiction under a preceptor registered or recognized by a licensing board.

18 VAC 95-20-380. Qualifications of preceptors.

Amendments are proposed that would permit more nursing home administrators to serve as preceptors. Current regulations require that a preceptor be employed full-time at the training facility for 2 out of 3 years immediately preceding the preceptorship. Amended regulations will permit an administrator to serve as a preceptor provided he is already registered with the board and served as a full-time administrator 2 out of 3 years prior to registration.

18 VAC 95-20-390. Training plan.

For greater clarity, the Board has incorporated by reference the current Domains of Practice approved by the National Association of Boards of Examiners for Long Term Care Administrators and specified that an AIT program must include training in each of the learning areas in the Domains.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

There were no specific alternatives for achieving the purpose of the existing regulation considered as a part of the periodic review process, since the basic requirements for licensure as a nursing home administrator are consistent with national standards and minimal in assuring the qualification of someone entrusted with the operation of such a facility. While the Board determined that amendments for clarification, consistency and better compliance were necessary, the regulation represents the least burdensome alternative available for achieving the purpose.

To decide on needed amendments to regulation, a committee of the Board and the full Board of Nursing Home Administrators held three public meeting on to conduct a review of regulations and discuss related issues. Based on the issues raised and the need for clarification of some provisions, the Board voted to request permission to proceed with certain amendments to regulations. Following the comment period on the NOIRA, the Board concluded that additional study of education and training requirements was necessary, so an advisory committee comprised of educators and administrators was appointed.

Training and education requirements

The advisory committee reviewed education and training requirements from 8 other states and the administrator in training manual of the National Association of Boards of Examiners for

Long Term Care Administrators (NAB). The requirements in Virginia were compared with other states and with the model AIT program suggested by NAB. As a result of its study, the committee recommended and the Board adopted changes to regulations intended to reduce the training requirement for persons with certain educational or experiential credentials. In several aspects of training, the Board departed from the model AIT program to ensure that persons seeking licensure as a nursing home administrator have had experience and training in a licensed nursing home, not just in health care administration. With the plethora of state and federal rules governing nursing homes, it is essential that an applicant be adequately prepared to address issues unique to that industry.

The Board also departed from the model program recommendation on the number hours required in an AIT program for persons with master's or bachelor's degrees in an unrelated field. Currently, an applicant in Virginia with those educational credentials would be required to complete a 2,000-hour AIT program. The model AIT program suggested a 500-hour AIT program for someone with an unrelated master's degree and a 1,000-hour program for someone with an unrelated bachelor's degree. The Board compromised by requiring a 1,000 hours in an AIT program for the unrelated master's degree and 1,500 hours for the unrelated bachelor's degree. Other amendments, such as 1,000 hours of credit for a registered nurse who has worked as a supervisor in a nursing home, will make the AIT program less burdensome for many applicants.

Preceptorships

The other issue identified as a burdensome regulation is the requirement for training under a preceptor and in a facility licensed in Virginia. Current regulations allow for training only in certain licensed facilities in Virginia and also require that a preceptor be a Virginia-licensed nursing home administrator, registered with the board as a preceptor. The problem arises when a trainer has completed most or some of his training in another state but moves to Virginia and needs to complete his training program. Under the current rules, none of that time spent training in a licensed facility out-of-state could be counted. In recognition of the population's mobility and more national standards, the Board has adopted amendments to recognize training facilities and preceptors in other states.

The other problem related to the requirement for "direct" supervision by the preceptor. In all nursing home facilities, it is not practical nor is it necessary for the preceptor to always be in the facility to directly supervise the activities of the trainee. Amended regulations will specify that the preceptor must be routinely available in the facility, provide direct, on-site instruction, and offer continuous evaluation on the development and experience of the trainee to determine specific areas of need for training.

Amendments to the qualifications of a preceptor will allow someone who met the requirement of full-time employment as the administrator of record in a training facility at the time of registration to continue serving as a preceptor if their role or employment changes. With the corporate ownership of many nursing homes, a preceptor may not be the full-time administrator in one training facility but may have responsibility for training in several facilities.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

An announcement of the board's intent to amend its regulations was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the Public Participation Guidelines mailing list for the board. The public comment period was from 10/8/2001 through 11/7/2001. During the 30-day comment period, no comments were received from members of the public.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Members of the Board met in open session to work on draft regulations, and the public has been invited to comment during the course of those meetings. In addition, persons involved in educational programs, preceptorships, and other aspects of nursing home administration served on an advisory committee to share their expertise with the Board during the process. No comments have been received regarding the need for clarity in the proposed amendments. The Assistant Attorney General who provides counsel to the Board has been involved during the development and adoption of proposed regulations to ensure clarity and compliance with law and regulation.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

Public participation guidelines require the Board to review regulations each biennium or as required by Executive Order. Regulations governing the practice of nursing home administration will be reviewed again during the 2004-05 fiscal year.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

In its preliminary analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability and no effect on family income.